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AUG 6, 97
Hearing:
December 10, 1996

Paper No. 17
EWH/King

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Fun Factory, Inc.

Serial No. 74/433,460

Gary M. Nath of Nath & Associates for Fun Factory, Inc.

Zhaleh Sybil Delaney, Trademark Examining Attorney, Law Office 101 (Ron Williams, Managing Attorney)

Before Cissel, Hanak and Quinn, Administrative Trademark Judges.
Opinion by Hanak, Administrative Trademark Judge:

Fun Factory, Inc. (applicant) seeks registration of CARROUSEL PARK for "indoor amusement centers." The intent-to-use application was filed on September 7, 1993.

The Examining Attorney refused registration pursuant to § 2(e)(1) of the Lanham Trademark Act on the basis that applicant's mark is merely descriptive of applicant's services.

When the refusal was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs and were present at a hearing held December 10, 1996.

Before discussing the merits of this case, one procedural matter should be dealt with. Applicant attached to its appeal brief exhibits A-H. These exhibits were not previously made of record by applicant, and in her appeal brief, the Examining Attorney properly objected to their introduction into evidence. However, at the oral hearing, the Examining Attorney waived her objection. Hence, in reaching our decision, we have considered exhibits A-H. Exhibits A is a picture of the outside of applicant's indoor amusement center. Exhibits B-G are pictures of various locations inside applicant's indoor amusement center. Finally, exhibit H is a flyer announcing that applicant's indoor amusement center offers birthday packages.

Considering first the PARK portion of applicant's purported mark, applicant argues that this term is not descriptive of applicant's indoor amusement centers because the term "can denote ball park, city park, parking lot, playground, national park, skateboard park, etc." (Applicant's brief page 8). However, what applicant fails to recognize is that the descriptiveness of the term PARK in applicant's purported mark is not determined in the abstract, but rather is determined in relation to the goods or services for which registration is sought. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978). The Examining Attorney has made of record dictionary definitions showing that one of the definitions of the term "park" is "an area set aside for a particular commercial

use: specif., a) amusement park..." Webster's New World Dictionary (3d ed. 1994). Moreover, the Examining Attorney has made of record numerous stories from the NEXIS database wherein the term "indoor amusement park(s)" appears. Thus, when used in conjunction with an indoor amusement center or indoor amusement park, the term PARK is, at the very minimum, highly descriptive of such services.

Considering next the term CARROUSEL in applicant's purported mark, applicant argues that said term is not descriptive of its indoor amusement centers by making the following statements as pages 7 and 8 of its brief:

> Applicant uses CARROUSEL PARK to identify an indoor amusement center consisting of nine rides, a food service center, party area, showroom, arcade games and video games.... Out of all these activities, there is one carrousel among the nine rides. Rides comprise an insufficient component of the part [sic], merely one of at least six distinct activities, including a party area, a food services area, a showroom, arcade games and video games. The mark does not convey information about any of these services and therefor is not descriptive. Indeed, if we calculate mathematically the significance of a carrousel as a proportion of the overall services offered by applicant as described in the record, the carrousel is 1/9 of the rides which in turn represent about 1/6 of the overall operation. This means that the carrousel ride itself represents at best 1/54th of the range of applicant's services performed

> at the CARROUSEL PARK. As such, "carrousel", at best, is descriptive of 1/54th of the activities offered at CARROUSEL PARK.

There is a fundamental flaw in applicant's reasoning. Applicant is attempting to have the discriptiveness of the term CARROUSEL judged not by the services as described in the application (indoor amusement centers), but rather by the services which applicant purportedly offers. As our primary reviewing Court has stated, "the authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods [or services] set forth in the application regardless of what the record may reveal as to the particular nature of applicant's goods [or services]." Octocom Systems Inc. v. Houston Computers Services Inc., 918 F.2d 737, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990). In upholding the Board's decision refusing registration of the term SCANNER for "antennas" on the ground that the mark is merely descriptive of said goods, the Court rejected applicant's argument that its particular antennas were not scanning antennas. In so doing, the Court noted that "trademark [and service mark] cases must be decided on the basis of the identification of the goods [or services] as set forth in the application." Continuing, the Court noted that "since the goods are described merely as 'antennas' and that term is broad enough to encompass 'scanning antennas,' the mark SCANNER as applied to the goods is merely descriptive." In re Allen

Electric & Equipment Co., 458 F.2d 1404, 173 USPQ 689, 690 (CCPA 1972). Indeed, applicant itself in its reply brief acknowledges this principle by stating that "whether a term is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought." (Applicant's reply brief page 4, emphasis added).

Thus, the fact that in reality a carrousel purportedly constitutes a small part of applicant's indoor amusement centers is an irrelevant point. Applicant's description of services reads simply "indoor amusement centers." The term "indoor amusement centers" is broad enough to include centers which prominently feature carrousels, or indeed which feature only carrousels. At page 10 of its brief, applicant even acknowledges that "if the term CARROUSEL PARK immediately evoked an image, at best it would be an image of a park full of carrousels."

In short, we find that the term CARROUSEL PARK when used in conjunction with "indoor amusement centers" immediately conveys to consumers information about the centers, namely, that they are parks (centers) featuring a carrousel(s). The fact that in reality applicant's particular indoor amusement centers do not purportedly feature a carrousel is irrelevant inasmuch as the descriptiveness of a term must be judged in relationship to the goods or service for which registration is sought. Moreover, in reviewing exhibits A-H attached to applicant's

brief, we find that said exhibits demonstrate that a carrousel is a prominent feature of applicant's indoor amusement centers, and thus the term CARROUSEL PARK is even descriptive of applicant's particular indoor amusement centers. Exhibit A shows the outside of applicant's CARROUSEL PARK. Looking in the windows, one can see the carrousel located near the entrance to applicant's CARROUSEL PARK . Exhibit D shows not only the carrousel as seen from the inside, but in addition, it shows that a carrousel motif is utilized to decorate applicant's gift shop. Finally, reviewing the birthday flyer for applicant's CARROUSEL PARK (exhibit H), we note that immediately beneath the words CARROUSEL PARK at the top of the flyer there appears a picture of a wooden horse on a carrousel. Hence, a review of applicant's own exhibits undercuts applicant's contention that a carrousel forms an insufficient part of applicant's indoor amusement centers.

Decision: The refusal to register is affirmed.

R. F. Cissel

E. W. Hanak

T. J. Quinn
Administrative Trademark
Judges, Trademark Trial
and Appeal Board